

SUBPART 218-9**AFTERMARKET PARTS**

Sec.

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Subpart (§§ 218-9.1) filed Oct. 23, 1990; repealed, new (§§ 218-9.1—218-9.7) filed April 28, 1992 eff. 30 days after filing.

Section 218-9.1 Applicability. This Subpart shall apply to all aftermarket parts which are sold, offered for sale, or advertised for sale or use on 1993 and subsequent model-year vehicles which are subject to New York State or Federal emission standards.

Historical Note

Sec. filed Oct. 23, 1990; repealed, new filed April 28, 1992 eff. 30 days after filing.

218-9.2 Prohibition. (a) No person engaged in a business which involves the selling of air contaminant emission control systems, or parts thereof, shall offer for sale, sell, or install, an air contaminant emission control system, or part thereof, unless it meets the regulations and standards as set forth in this Subpart.

(b) No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required air contaminant emission control system which alters or modifies the original design or performance of any such air contaminant emission control system. This section shall not apply to an alteration, modification, or modifying device, apparatus or mechanism found by the department to either:

(1) not reduce the effectiveness of any air contaminant emission control system;
or

(2) result in emissions from any such modified or altered vehicle which are at levels which comply with applicable State or Federal standards for that model-year of vehicle being modified or converted.

Historical Note

Sec. filed April 28, 1992 eff. 30 days after filing.

218-9.3 Replacement parts.

(a) (1) Any replacement part, including consolidated parts, offered for sale or sold in California and subject to the California Code of Regulations, title 13, sections 2221, 2224, (see Table 1, section 200.9 of this title) shall be presumed to be in compliance with this Subpart unless California makes a finding to the contrary pursuant to the California Code of Regulations, title 13, sections 2221 and 2224 (see Table 1, section 200.9 of this Title).

(2) Any replacement part, including consolidated parts, not offered for sale or sold in California, shall be presumed to be in compliance with this Subpart unless the department makes a finding to the contrary in accordance with the California Code of Regulations, title 13, section 2224(a) (see Table 1, section 200.9 of this Title).

(b) The manufacturer of any replacement part subject to the provisions of this Subpart shall maintain sufficient records, such as performance specifications, test data, or other information, to substantiate that such a replacement part is in compliance with this section. Such records shall be open for reasonable inspection by the department or

his/her representative. All such records shall be maintained for four years from the year of manufacture of the replacement part.

Historical Note

Sec. filed April 28, 1992 eff. 30 days after filing.

218-9.4 Add-on and modified parts. (a) As used in this section, the terms *advertise* and *advertisement* include, but are not limited to, any notice, announcement, information, publication, catalog, listing for sale, or other statement concerning a product or service communicated to the public for the purpose of furthering the sale of the product or service.

(b) (1) No person or company doing business solely in New York or advertising only in New York shall advertise any device, apparatus, or mechanism which alters or modifies the original design or performance of any required air contaminant emission control system unless such part, apparatus, or mechanism has been exempted from section 218-9.2(b) of this Subpart, and the limitations of the exemption, if any, are contained within the advertisement in type size to give reasonable notice of such limitations.

(2) (i) No person shall advertise, offer for sale, or install a part as an air contaminant emission control system or as an approved or certified device, when in fact such part is not an air contaminant emission control system or is not approved or certified by the department or by California.

(ii) No person shall advertise, offer for sale, sell or install an add-on or modified part as a replacement part.

(3) (i) Add-on and modified parts exempted in accordance with the California Code of Regulations, title 13, section 2222 (see Table 1, section 200.9 of this Title) are deemed exempt for purposes of this Subpart.

(ii) The department may exempt add-on and modified parts, including consolidated parts, that are not subject to the California Code of Regulations, title 13, section 2222 (see Table 1, section 200.9 of this Title). The department shall make this determination in accordance with the California Code of Regulations, title 13, section 2222 (see Table 1, section 200.9 of this Title).

(iii) Each person engaged in the business of retail sale or installation of an add-on or modified part which has not been exempted from section 218-9.2(b) of this Subpart shall maintain records of such activity which indicate date of sale, purchaser name and address, vehicle model and work performed if applicable. Such records shall be open for inspection by the department or his/her representative. All such records shall be maintained for four years from the date of sale or installation.

Historical Note

Sec. filed April 28, 1992 eff. 30 days after filing.

218-9.5 Surveillance. (a) *Replacement parts.* The department may require the manufacturer of any replacement part subject to the provisions of section 218-9.3(a)(2) of this Subpart to submit any records relating to such part which are maintained pursuant to section 218-9.3(b) of this Subpart. The department may require the manufacturer of any replacement part subject to the provisions of section 218-9.3(a)(2) of this Subpart to submit a reasonable number of parts typical of the manufacturer's production for testing and evaluation. If after a review of all records submitted by the manufacturer and of the results of any tests conducted by the department's staff, the department finds that such part is not in fact a replacement part, the department may invoke section 218-9.6 of this Subpart. Replacement parts evaluated pursuant to this

section shall be compared with the specifications contained in the applicable vehicle manufacturer's application for certification.

(b) *Add-on parts and modified parts.* The department may require the manufacturer of any add-on or modified part subject to the provisions of section 218-9.4(b)(3)(ii) of this Subpart to submit a reasonable number of parts typical of the manufacturer's production for testing and evaluation. If after review of the results of any test or evaluations conducted by the department's staff and of any information submitted by the manufacturer, the department finds that an add-on part or a modified part does not conform to California Code of Regulations, title 13, section 2222, (see Table 1, section 200.9 of this Title), the department may invoke section 218-9.6 of this Subpart.

Historical Note

Sec. filed April 28, 1992 eff. 30 days after filing.

218-9.6 Corrective action. (a) When this section is invoked pursuant to other sections of this Subpart, the department may require the manufacturer to submit a plan for correcting any deficiencies found by the department. The manufacturer shall submit the plan within 30 calendar days after notification. The department may require any of the actions contained in the plan, and/or may declare a part of the plan to be not in compliance with section 218-9.2(b) of this Subpart unless it finds the plan adequate to correct the deficiencies found by the department. The manufacturer may be required to include in the plan such corrective actions as the cessation of sale of noncomplying parts and corrective advertising to correct misleading information regarding the emission control capabilities of the device and to ensure compliance with New York laws. Nothing in this section shall prevent the department from also seeking fines for violations of section 218-9.2(b) of this Subpart, or other regulations or laws, as applicable.

(b) The manufacturer may, within 15 calendar days of its receipt of the department's demand for corrective action, request a public hearing on the necessity for or scope of any corrective action required by the department.

Historical Note

Sec. filed April 28, 1992 eff. 30 days after filing.

218-9.7 Repair station. Any person holding a vendor's certificate of authority who sells or installs an air contaminant emission control system, or part thereof, in violation of section 218-9.2(b) of this Subpart shall thereafter be required to install an air contaminant emission control system, or part thereof, which is in compliance with the provisions of this Subpart, upon demand of the purchaser or registered owner of the vehicle concerned, or at the election of the purchaser or registered owner to reimburse the purchaser or registered owner for the expense of replacement and installation of an air contaminant emission control system, or part thereof, which is in compliance.

Historical Note

Sec. filed April 28, 1992 eff. 30 days after filing.